BORA LASKIN LAW LIBRARY
31761 09564211 2

UNIVERSITY OF TORONTO
FACULTY OF LAW

RESTITUTION

2013-2014

Professor Ernest J. Weinrib

Faculty of Law
University of Toronto

KE
1229
.W45
2013
c.1

BORA LASKIN LAW LIBRARY

SEP - 3 2013

FACULTY OF LAW
UNIVERSITY OF TORONTO

RESTITUTION

2013-2014

Professor Ernest J. Weinrib

Faculty of Law
University of Toronto

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/restitution00wein_9

RESTITUTION

I. THE NATURE OF RESTITUTION

Aristotle, Nicomachean Ethics, Book Five 1129a26 - 1132b20,
(Ostwald trans.).....1
Ernest J. Weinrib, Corrective Justice in a Nutshell, 52 U.T.L.J. 349 (2000).....6
Edwards v. Lee's Administrator, 96 S.W. (2d) 1028 (Ky. C.A., 1936).....13
Vincent v. Lake Erie Transportation Co. (1910), 124 N.W. 222 (Minn. S.C.).....17
Extract from American Restatement of Restitution (1937),
§ 122. Benefits Derived From the Exercise of Incomplete Privilege.....20
Palmer, The Law of Restitution, Volume I, 139-140
(Boston and Toronto: Little, Brown, 1978).....22
Foskett v. McKeown [2003] 3 All ER 97 (HL).....23

II. THE DEVELOPMENT OF UNJUST ENRICHMENT

Moses v. MacFerlan (1760), 97 E.R. 676, 2 Burr. 1005 (K.B.).....34
Dobbs, Handbook on the Law of Remedies, (St. Paul: West, 1973) 229.....36
Extract from American Restatement of Restitution (1937).....49
Seavey and Scott, Restitution, (1938) 54 Law Quarterly Review 29,
29-32, 36-39.....51
Deglman v. Guaranty Trust Co. and Constantineau, [1954] S.C.R. 725;
[1954] 3 D.L.R. 785.....55
Pavey & Matthews Proprietary Ltd. v. Paul (1986) 162 C.L.R. 221
(H.C. Australia).....57
Dublin v. Building and Allied Trade Union [1996] 2 ILRM 547 (S.C.).....62

III. THE MODERN JURISPRUDENCE OF THE SUPREME COURT OF CANADA

Pettkus v. Becker (1980), 117 D.L.R. (3d) 257 (S.C.C.).....69
Hunter Engineering Co. v. Syncrude Canada Ltd., [1989] 1 S.C.R. 426.....76
*Regional Municipality of Peel v. Her Majesty the Queen in right of
Canada* (1992), 98 D.L.R. (4th) 140 (S.C.C.).....83
Peter v. Beblow (1993), 101 D.L.R. (4th) 621 (S.C.C.).....94
Garland v. Consumers' Gas Co., [2004] 1 S.C.R. 629.....107
Kingstreet Investments Ltd. v. New Brunswick (Department of Finance)
[2007] 1 SCR 3.....117
Alberta v. Elder Advocates of Alberta Society, [2011] 2 SCR 261.....125
Kerr v Baranow, [2011] 1 SCR 269.....131

III. UNREQUESTED BENEFITS

1. "One Cleans Another's Shoes ..."

Taylor v. Laird (1856), 156 E.R. 1203 147
Restatement of Restitution - s. 2 148
Birks, An Introduction to the Law of Restitution (1985) 101-103 149
Greenwood v. Bennett, [1973] 1 Q.B. 195 (C.A.) 151
Nicholson v. St. Denis (1975), 8 O.R. (2d) 315 (C.A.) 154
Costello & Anor v MacDonald & Ors, [2011] EWCA Civ 930 157
Gidney v. Shank [1995] 5 W.W.R. 385 (Man Q.B.) 163
Gidney v. Shank reversed [1996] 2 W.W.R. 383 (Man C.A.) 167
LAC Minerals Ltd. v. International Corona Resources Ltd. (1987), 44 D.L.R. (4th) 592 (Ont. C.A.); (1989) 61 D.L.R. (4th) 14 (S.C.C.) 169

2. Incidental Benefits

Ruabon Steamship Co. v. London Assurance, [1900] A.C. 6 (H.L.) 172
Edinburgh and District Tramways v. Courtenay [1909] S.C. 99 176
United States v. Pacific Railroad 7 S. Ct. 490 (1887) 178

3. Preserving Another's Property

Binstead v. Buck (1777), 2 Wm. Black. 1117 (C.P.) 180
Nicholson v. Chapman (1793) 126 E.R. 536 (C.P.) 181
Falcke v. Scottish Imperial Insurance Company (1886), 34 Ch. D. 234 183
Great Northern Railway v. Swaffield (1874) L.R. 9 Ex. 132 (Exch.) 188
Prager v. Blatspiel, Stamp and Heacock, [1924] 1 KB 566 (KBD) 190
Jebara v. Ottoman Bank, [1927] 2 KB 254 (C.A.) 192
China Pacific S.A. v. Food Corporation of India (The Winston), [1982] A.C. 939 (H.L.) 193
Restatement of Restitution - s. 117 196

4. Preserving Another's Health

Jenkins v. Tucker (1788) 126 ER 555 (C.P.) 198
Shallcross v. Wright (1850) 50 E.R. 1174 199
Matheson v. Smiley, [1932] 2 D.L.R. 787 (Man. C.A.) 201
Restatement of Restitution - s. 116 203

5. Discharging Another's Liability

Moule v. Garrett (1872), L.R. 7 Ex. 101 (Ex. Chamber) 205
Brooks Wharf & Bull Wharf, Ltd. v. Goodman Bros., [1936] 3 All E.R. 696 (C.A.) 207
Owen v. Tate, [1975] 2 All E.R. 129 (C.A.) 210
Norton v. Haggett (1952), 85 A. 2d 571 (Vt. S.C.) 215

IV. MISTAKEN PAYMENTS

1. The Irrelevance of Fault

Kelly v. Solari (1841), 9 M & W 54, 152 E.R. 24 218
Clark v. Eckroyd (1885), 12 O.A.R. 425 220
R.E. Jones v. Waring and Gillow, [1926] A.C. 670 (H.L.) 223

2. Change of Position

Rural Municipality of Storthoaks v. Mobil Oil Canada Ltd. (1975), 55 D.L.R. (3d) 1 (S.C.C.) 227
Lipkin Gorman v. Karpnale, [1992] 4 All E.R. 512 (H.L.) 229
Dextra Bank & Trust Co Ltd v Bank of Jamaica, [2002] 1 All ER (Comm) 193 (PC) 1 All ER (Comm) 193 (PC) 240
RBC Dominion Securities Inc. v. Dawson (1994), 111 D.L.R. (4th) 230 (Nfld. C.A.) 242

V. RESTITUTION FOR WRONGS

1. Tortious Wrongs

Lamine v. Dorrell (1701), Ld. Ray. 1216 250
United Australia v. Barclays Bank, [1941] A.C. 1 (H.L.) 251
Phillips v. Homfray (1883), 24 Ch. D. 439 256
Strand Electric and Engineering v. Brisford Entertainments, [1952] 2 Q.B. 246 (C.A.) 260
Olwell v. Nye and Nissen, 173 P. 2d 652 (Wash. S.C., 1946) 265

2. Breaches of Fiduciary Obligation

Reading v. Attorney General, [1951] A.C. 507 (H.L.) 268
Attorney-General for Hong Kong v. Reid, [1994] 1 A.C. 324 (P.C.) 273

3. Breaches of Contract

British Motor Trade Association v. Gilbert, [1951] 2 All E.R. (641) Ch.D.) 282
New Orleans v. Firemen's Charitable Association, 9 SO. 486 (La S.C., 1891) 284
Adras Building Materials v. Harlow & Jones, February 11, 1988 (Supreme Court of Israel); [1995] Restitution Law Review 235 285
Attorney General v. Blake [2000] 4 All E.R. 385 (H.L.) 293